

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HARVARD REAL ESTATE-ALLSTON, INC.

Plaintiff,

v.

KMART CORPORATION,

Defendant.

Civil Action No. 04-12249-DPW

REQUEST FOR SPECIAL RELIEF
(EMERGENCY DETERMINATION)

**DEFENDANT KMART CORPORATION'S
EMERGENCY MOTION TO ENLARGE TIME TO SUBMIT
REPLIES TO MOTION TO DISMISS COUNTERCLAIMS AND
MOTION TO REMAND CASE TO STATE COURT**

Defendant Kmart Corporation ("Kmart" or "Defendant") respectfully submits this motion to extend Kmart's time to reply to Plaintiff Harvard Real Estate-Allston, Inc.'s ("Harvard" or "Plaintiff") motions to (i) dismiss Defendant's counterclaims (the "Motion to Dismiss") and (ii) remand this case to state court (the "Motion to Remand"). Kmart requests that the Court establish that Kmart shall have until December 13, 2004 to file replies to both the Motion to Dismiss and the Motion to Remand. Absent the requested extension, responses to the two motions will be due December 6, 2004 and December 8, 2004, respectively.

1. This action was originally commenced by Plaintiff in Massachusetts state court on October 18, 2004, and involves Plaintiff's attempt to terminate its lease with Defendant. On October 25, 2004, Defendant removed the case to this Court.

Shortly thereafter, on November 1, 2004, Defendant filed its Answer and Counterclaims.

2. On November 22, 2004, Defendant received the Motion to Dismiss, and on November 24, 2004, Plaintiff hand delivered the Motion to Remand. Although counsel for Defendant's office received the Motion to Remand on November 24, 2004, the attorney handling the case did not receive the Motion to Remand until November 29, 2004, following the Thanksgiving holiday.

3. Having reviewed both the Motion to Dismiss and the Motion to Remand, counsel decided that additional time would be necessary to respond to the motions. Counsel for Defendant contacted counsel for Plaintiff on December 1, 2002 and requested a brief extension of time to reply to both the Motion to Dismiss and the Motion to Remand until December 13, 2004. Counsel for Plaintiff responded that (i) Harvard would agree to the requested extension only if Kmart assented in writing to Harvard filing a reply brief and (ii) Harvard would not allow Kmart to file a surreply. Because Kmart is not willing to give up its right to seek Court permission to file a surreply to any reply brief that might be filed by Harvard, the parties were unable to reach an agreement.

4. Kmart submits its request is reasonable given the timing of its receipt of the motions, the intervening Thanksgiving holiday, the complexity of the issues involved in each motion, and relatively short extension that it is seeking.

5. Defendant respectfully submits that no memorandum in support of this motion is necessary given the relatively straightforward relief sought herein.

6. Accordingly, Kmart respectfully requests that the Court determine this motion without a hearing and on an emergency basis, and grant a brief extension of time to reply to the Motion to Dismiss and the Motion to Remand to December 13, 2004.

RULE 7.1 CERTIFICATION

Pursuant to Local District Rule 7.1, Defendant certifies that its counsel has conferred with counsel for Plaintiff and has attempted in good faith to resolve or narrow the issues presented herein, prior to filing this motion, but was unable to do so as indicated in paragraph 3 hereof.

December 2, 2004

KMART CORPORATION
By its attorneys,

/s/William R. Moorman, Jr.
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CERTIFICATE OF SERVICE

I, Joseph J. Koltun, an attorney, hereby certify that I caused a true and correct copy of the foregoing Emergency Motion to Enlarge Time to Submit Replies to Motion to Dismiss and Motion to Remand This Case to State Court to be served upon the party listed below by hand delivery this 2nd day of December 2004.

Frank A. Flynn, Esq.
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/s/Joseph J. Koltun
Joseph J. Koltun